

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

STEVEN ULAN HAMMON,

Petitioner,

v.

Civil Action No.: 2:13-24737

CRAIG ADKINS, Administrator,
South Central Regional Jail,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed October 8, 2013, mistakenly filed by him as being under W. Va. Code § 53-4A-1.

This action was previously referred to Cheryl A. Eifert, United States Magistrate Judge, who, on October 17, 2013, submitted her Proposed Findings and Recommendation ("PF&R") pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommends that the petition be dismissed for failure to exhaust state remedies. See 28 U.S.C. § 2254(b)(1)(A).

On November 1, 2013, petitioner's objections were filed. He objects on the basis that he has de facto exhausted his state remedies. He contends that "the state has no

intention of responding to his petition" because he is proceeding pro se and "[p]ro-se motions in the state court usually do[] not garner any response," and that "[t]here is no indication that the state court recognizes pro-se petitions."¹

Having considered the objection, the court concludes that it is not meritorious. There is no indication that the state court will not, or has failed to, consider any petition for postconviction relief filed by the petitioner, and petitioner cites no support for his contention that pro se habeas petitions are regularly disregarded by the state courts. Moreover, the petitioner has not attempted any state court postconviction relief other than a motion for reduction of sentence, which is still pending in the state court.

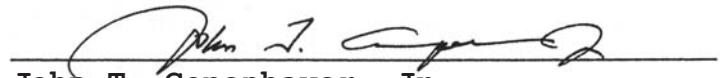
Based upon the foregoing discussion, it is ORDERED that:

1. The findings made in the PF&R of the magistrate judge be, and they hereby are, adopted by the court; and
2. The section 2254 petition, and this action, be, and they hereby are, dismissed without prejudice.

¹ In the submission, the petitioner also argues that there is newly discovered evidence in his case. This is not relevant to the magistrate judge's finding that he did not exhaust his state court remedies, but rather a new argument for his release.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record, any unrepresented parties, and the magistrate judge.

DATED: November 25, 2013


John T. Copenhaver, Jr.
United States District Judge